

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Westown Associates, LLC,

Petitioner-Appellant,

v.

City of Ames Board of Review,

Respondent-Appellee.

ORDER

Docket No. 10-100-0421

Parcel No. 09-11-250-055

On September 30, 2011, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Westown Associates, LLC was represented by Attorney Timothy C. Hogan, Hogan Law Office, Des Moines, Iowa. The City of Ames Board of Review was represented by Assistant City Attorney Kristine R. Stone as its legal representative. The Appeal Board having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Westown Associates, LLC (Westown) is the owner of a commercially classified, vacant site located at 205 SE 5th Street, Ames, Iowa. The site is 3.89 acres in size. There are no improvements.

Westown protested to the Board of Review regarding the 2010 assessment of \$1,600,000, allocated solely to the site. While there was no change in total value from the 2009 assessment to the 2010 assessment, the existing improvements were razed.

The history of the prior assessment is relevant in this appeal. Westown protested the January 1, 2009, assessment of the subject property. At the time of the 2009 assessment, the property included a 22,000 square-foot industrial building, which was razed in late 2009. The total January 1, 2009,

assessment was \$1,600,000, initially allocated between site and land. In a move to correct what it believed was its own error, the Assessor petitioned the Board of Review to move the entire valuation onto the site, and remove any value to the improvements under the incorrect belief the improvements had been razed. Although the total valuation remained the same, the allocation of this value between land and improvement did not, and all of the valuation was assigned to the land. Because Westown had not initially protested its January 1, 2009, assessed value, the sole issue for the 2009 appeal to this Board was the allocation between land and improvement.

The 2009 appeal was not heard by this Board until July 2010, with a decision rendered in August 2010. That decision determined the value of the improvements on the subject property was removed improperly and prematurely, since demolition was not even begun until well after January 1, 2009. We further stated that “any change in value subsequent to January 1, 2009, should be reflected in the next reassessment.” Because we did not hear the 2009 appeal until mid-2010, the January 1, 2010, total assessment of the subject property remained the same as the January 1, 2009, total assessment. However, in this factual circumstance, the property itself changed from January 1, 2009, to January 1, 2010, with the removal of the existing improvement. As such, this Board’s decision can not simply be adopted as the January 1, 2010, assessment because the 2009 decision allocated value to the improvements which no longer exist in 2010.

Westown appealed to the Board of Review asserting a claim its assessment is not equitable with assessments of other like property under Iowa Code section 441.21(1)(a); and, that there has been a change in the value since the last assessment under sections 441.37(1) and 441.35(3). Westown’s attached document asserting a change in value is in fact an assertion that the subject property is assessed for more than the value authorized by law under section 441.21(1)(b).

The Board of Review granted partial relief and reduced the value of the land to \$1,300,000, citing equity as its reasoning.

Westown then appealed to this Board reasserting its claims. It also added the claim that there is an error in the assessment under section 441.21(1)(d). We will only consider the claims of equity and more than authorized by law. Ultimately, we note that the evidence and testimony presented was in regards to market value only.

At hearing, Steve Scott, Senior Vice President of Ruhl and Ruhl Commercial Company testified on behalf of Westown. Scott testified that Westown purchased the improved subject site in 2007¹ from the State of Iowa in a sealed bid process. He stated that when the subject property was purchased the intent was to redevelop. However, he also suggested there was value to the improvements.

When questioned about the motivation at the time of purchase, he again testified the value was primarily in the land and its future re-development. He was unable to clarify precisely what consideration in the sale was given to the improvements, but indicated the building was originally intended to be used as rental warehouse space for an interim basis or potentially renovated to a storefront. The building was razed in late 2009. A mechanics lien (Exhibit 14) indicates the cost of demolition was \$47,000. At hearing, Scott testified the cost to demolish the improvements was \$85,000.

In this case, the contributory value of the building is relevant only in determining what type of adjustments, if any, need to be made in a market analysis of the vacant land.

Russ Manternach, with Commercial Appraisers of Iowa, Inc., prepared a market value appraisal report for the City of Ames Board of Review with an effective date of January 1, 2010. Manternach's appraisal relied on five comparable sales, one of which was the subject property. Manternach reports the sale of the subject property as April 2007; as such, it is the oldest sale analyzed by Manternach.

¹ A print-out from the Assessors website (Exhibit 18) indicates a transfer date of July 2008. However, testimony from both parties indicates the property was purchased in 2007.

In his appraisal report, Manternach indicates the “grantee used (the) building for two years and then razed for redevelopment purposes. Any contributory value of the building is offset by demo cost.” (addendum of appraisal, page 2.) Manternach testified he verified this information with Steve Scott. Although the subject site was improved, the improvements were noted as having minimal contributory value. Therefore, Manternach treated the 2007 sale of the subject as a vacant site.

Of the four remaining sales considered by Manternach, four sold in 2008 and one sold in January 2010. The unadjusted price-per-square-foot of all five comparables is \$5.44 to \$16.28, with a median of \$10.58. The unadjusted price-per-square-foot of the subject property was \$9.44.

After adjustments, the indicated square foot value ranged from \$6.80 to \$7.93, with a median of \$7.13. Taking the subject sale out of the equation because it had improvements at the time of sale, the adjusted price-per-square-foot range of the remaining four vacant site comparables is \$6.80 to \$7.57, with a median of \$7.09. Manternach reconciled a price-per-square-foot of \$7.25 or \$1,230,000 (rounded).

Westown did not offer any evidence of market value for the subject site as of January 1, 2010.

On its petition to the Board of Review, Westown supplied the following information in regards to its equity claim:

	Assessed At:
212 High St/212 High St (Rear)	\$325,800
108 S 5th St/507 S Duff Ave Rear	\$437,900
811 S Duff Ave	\$387,100
1611 S Duff Ave	\$231,200
1615 S Kellogg Ave	\$368,000

Based upon property record cards submitted as Exhibit 16, the “assessed at” column reflects the 2010 assessed value of the land only. In the case of the first two properties, there are two parcels which are combined into a single-use site. The “assessed at” column combines the 2010 assessed land values of both sites. We note that 212 High St (Rear) has an agricultural classification which would

not make it comparable for equity purposes. Agricultural land is assessed on net productivity and earning capacity and commercially classified property is assessed at market value. The remaining four properties listed are commercially classified similar to the subject. The properties on 811 and 1611 S Duff Avenue are improved and the other two properties (108 S 5th St/507 S Duff Ave Rear and 1615 S Kellogg Ave) are vacant.

There is also a sixth property record card included in Exhibit 16 for an improved site located at 201 S 5th Street. This property is improved with a 92-unit apartment complex. The 2010 assessed value of the land only is \$501,000. The inclusion of this property is unexplained.

Westown did not offer any evidence or testimony regarding how these properties demonstrate inequity. As such, we give it limited consideration.

Westown's testimony was solely in regards to market value. Scott testified the subject site had diminished market value due to "issues with the site that they did not understand when they closed on it – unfortunately." Scott noted the proximity of the subject site within a floodway fringe, as well as being near a city "water-well field," brought certain restrictions to and requirements for developing the site.

Scott noted the water-well field is about 750 feet from the subject property. This proximity means that buildings had to be positioned differently on the site than originally anticipated. He also noted the proximity requires a wider retention area because they can't "go as deep" for the retention pond. This results in additional costs and loss of land according to Scott.

Scott also testified that three-quarters of the site would require over \$1,000,000 for site work. He stated the site work would include additional soil, compacting, underground utilities, paving, and parking lights. He noted the costs were roughly \$500,000 more than expected. We note the paving and lights would be part of the improvement value, not the site value. Scott contends the higher than

expected cost is due to the location of the subject property in a floodway fringe which requires additional dirt to be brought in to raise the site.

Sam Perry, a planner for the City of Ames, testified for the Board of Review. Perry testified about an ordinance enacted by the City of Ames in September 2009. The City's desire was to protect an aquifer that provides water to the water-wells. According to Perry, if the water-wells were compromised, Iowa Code and the Department of Natural Resources (DNR) would not allow re-drilling if a retention pond was within 1000 feet. As a result of this ordinance, Westown was required to re-submit its proposed site plan for the subject property. The original site plan (Exhibit F) has a retention pond located in the southeast corner of the site. Exhibit E shows the fringes of the 1000 foot radius from the water-wells now created by the city ordinance encompass the southeast portion of the subject site. The impact from the ordinance results in the southeast portion of the subject site being restricted from having a retention area.

Because the initial site plan had the retention pond in this area, it was essentially "reversed" with only minor additional changes (Exhibit G). While we recognize it would be inconvenient to resubmit a site plan, the impact as a result of the ordinance appears to be relatively minor and does not result in the loss of any building or parking area. It appears the only major impact is the location of the retention area. We also note the ordinance did not create the need for the retention area, but rather simply dictated where the retention area could not be located on the subject site.

Perry also testified the subject's location in the floodway fringe and associated requirements because of this location has not changed since 2007 when the subject site was purchased. Any requirements of site-fill to accommodate its location in the floodway fringe existed prior to Westown purchasing the site.

While it is clear the subject site has restrictions, some existed prior to the purchase, while others only restricted placement of already required/necessary retention areas.

Perry also noted that to the best of his knowledge some of the comparables considered by Manternach, for the most part, had similar site restrictions. He testified that 520 S Duff Avenue (comparable 2) did not have well-head issues but does have flood-way fringe issues; 806 S Duff Avenue (comparable 3) had both issues similar to the subject site; 3612 Stange Road (comparable 4) had neither issue; and, 2039 Oakwood (comparable 5) did not have the well-head issue, and he was not positive on the flood-way issue. We note comparable 3, identified by Perry as having the same issues as the subject site, had the highest unadjusted and adjusted price-per-square-foot.

We consider Perry's testimony about the prior existence of site restrictions relevant. However, because he is not an expert in the area of valuation, we find his testimony about the comparables insightful but less persuasive.

Westown did not offer any evidence of market impact on the value of its site due to these concerns compared to similar sites without these issues.

Based on the foregoing, we find Manternach's appraisal to be the best evidence in the record of the market value of the subject as of January 1, 2010. As such, we find sufficient evidence has been presented to demonstrate the subject property is assessed for more than authorized by law.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or

additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a). In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The Appeal Board considers all of the evidence and record as a whole, regardless of what party introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Westown did not provide any evidence of market value. While it testified to concerns and restrictions on its site, which it claims impact the market value; it did not provide any persuasive data or evidence to support these assertions. The best evidence in the record is Manternach's appraisal submitted by the Board of Review. Manternach considered four comparable vacant sites and the sale of the subject site in 2007. After adjustments for market conditions, location, size/shape, and topography/flood conditions, the adjusted values of the five comparables indicate a tight range of price-per-square-foot. Even if the subject sale is excluded due to being improved at time of sale, the

remaining four vacant sites still indicate a tight range of price-per-square-foot. We find Manternach's appraisal to be the best evidence in the record of the market value, as of January 1, 2010.

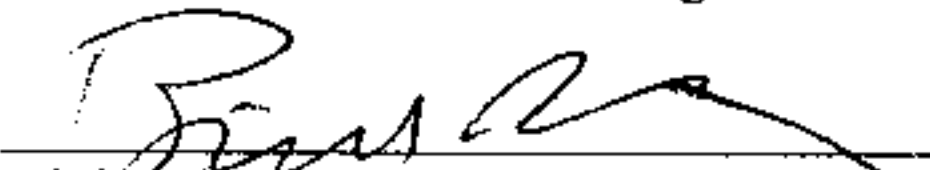
The evidence supports the claim that the property is assessed for more than the value authorized by Iowa Code section 441.21. Therefore, we modify the January 1, 2010, assessment of the property located at 205 SE 5th Street, Ames, Iowa, as determined by City of Ames Board of Review.

THE APPEAL BOARD ORDERS that Westown Associates, LLC's property located at 205 SE 5th Street, Ames, Iowa, is modified to a total value of \$1,230,000, as of January 1, 2010. The Secretary shall mail a copy of this Order to the Story County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

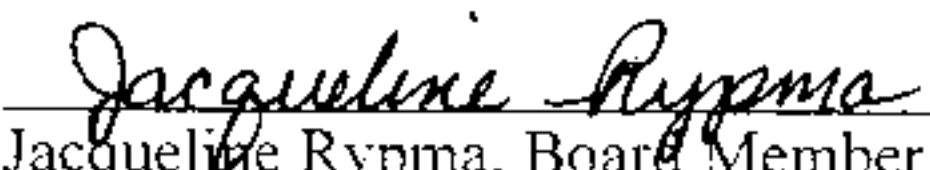
Dated this 17 day of November, 2011



Karen Oberman, Presiding Officer



Richard Stradley, Board Chair



Jacqueline Rypma, Board Member

Cc:

Timothy C. Hogan
Hogan Law Office
3101 Ingersoll Avenue
Des Moines, Iowa 50312
ATTORNEY FOR APPELLANT

Kristine R. Stone
515 Clark, PO Box 811
Ames, Iowa 50010
ATTORNEY FOR APPELLEE

Mary Mosiman
900 6th Street
Nevada, Iowa 50201
AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>11-17</u> , 2011	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	